IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1374

REPUBLICAN NATIONAL COMMITTEE, et al.,
Petitioners,

v.

FEDERAL ELECTION COMMISSION, et al.,
Respondents.

On Petition for Writ of Certiorari Before Judgment to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT FEDERAL ELECTION COMMISSION IN OPPOSITION

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Respondent Federal Election Commission requests that the petition for writ of certiorari before judgment to the United States Court of Appeals for the Second Circuit by petitioners, Republican National Committee, Ripon Society of New York, Inc., Paul Cardamone and John Schmid, be denied.

OPINIONS BELOW

The opinions below, joint findings of fact of the three-judge court and the single judge and the opinion of the three-judge court, are set forth in appellants' appendix to the jurisdictional statement in No. 79-1373. The final judgment of the single judge is set forth in appellants' appendix to the jurisdictional statement in No. 79-1374. These opinions are not yet reported. The single judge did not issue an opinion separate from that of the three-judge court in No. 79-1373. The opinion of the district court convening the three-judge court is reported at 461 F.Supp. 570.

JURISDICTION

28 U.S.C. § 1331 jurisdiction is improper in cases challenging the constitutionality of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.*, or of the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001, *et seq.* Those statutes have exclusive statutory provisions for judicial review, 2 U.S.C. § 437h and 26 U.S.C. § 9011, respectively.

STATUTES INVOLVED

This appeal challenges provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001, *et seq.*, (hereafter the "Fund Act") and also involves certain provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* (hereafter "FECA"). The full text of both statutes is set forth in appellants' appendix to the jurisdictional statement in No. 79-1373.

QUESTIONS PRESENTED

Whether the specific judicial review provisions of the Presidential Election Campaign Fund Act, 26

U.S.C. § 9011, and the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 437h, are the sole bases for federal court jurisdiction to hear cases challenging the constitutionality of the respective statutes.

Whether this Court should uphold the decision of the single judge, rendered after full consideration of the issues, that appellants' complaint does not state any claim based on the unconstitutionality of the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001, *et seq.*

Whether this Court should hear further argument where the questions presented by appellants were decided by this Court in *Buckley* v. *Valeo,* 424 U.S. 1 (1976).

STATEMENT OF THE CASE

This case and Nos. 79-1373 and 79-1375 arose from a single complaint which was dismissed by three unanimous courts. In order to avoid unnecessary duplication of argument, the complete statement of the case and the reasons why the decisions of the courts below should be affirmed are set forth fully in the Commission's motion to affirm in No. 79-1373 only. Additional jurisdictional questions as to this case and No. 79-1375 are addressed separately in the Commission's motion to dismiss or in the alternative to affirm in No. 79-1375 and in this brief in opposition to petition for writ of certiorari in No. 79-1374. The single district judge in this case was a member of the three-judge court convened pursuant to 26 U.S.C. § 9011(b) in No. 79-1373.

On October 12, 1979, the single district judge and the three-judge court issued joint findings of fact, and the single judge certified to the court of appeals a

question as to the constitutionality of 2 U.S.C. § 441a (b)(1)(B).[1] On February 5, 1980, the three-judge court issued its opinion, App. at 44a-63a, dismissing the complaint insofar as it sought to challenge the constitutionality of the Fund Act. The three-judge court's final judgment was entered on February 13, 1980. Upon request of appellants, the single judge entered a separate judgment also dismissing the complaint insofar as it sought to challenge the constitutionality of the Fund Act. App. in No. 79-1374 at 1a-2a.

REASONS WHY THE WRIT SHOULD BE DENIED

This Court should deny the writ for the reason that 28 U.S.C. § 1331 does not provide jurisdiction to hear claims alleging the unconstitutionality of the Fund Act or of FECA,[2] and even if jurisdiction was proper

[1] Does 2 U.S.C. § 441a(b)(1)(B) violate the rights of one or more of the plaintiffs under the First, Fifth or Ninth Amendment to the Constitution—

(a) by preventing a major party presidential candidate who accepts public financing for his general election campaign from making campaign expenditures in excess of the limits set forth therein;

(b) by preventing a major party presidential candidate who accepts public financing for his general election campaign from accepting, and preventing other persons from giving, campaign contributions (including expenditures coordinated with the candidates' campaign) to that campaign;

(c) by discriminating invidiously against major party presidential candidates who are challenging incumbents;

(d) by being overbroad?

[2] Appellants assert that the single judge judgment under 28 U.S.C. § 1331 is necessary in the event that jurisdiction was improper under 26 U.S.C. § 9011(b). In support of this contention, they cite to *Buckley* v. *Valeo*, Juris. Statement in No. 79-1373 at 5 n.1. However, the concern in *Buckley* was not the abolition of the Three-Judge Court Act, but rather that there was a challenge to the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031, *et seq.*, Chapter 96 of Subtitle H (as well as to the Fund Act and FECA), and Chapter 96 has no similar extraordinary provision for judicial review. *See* 26 U.S.C. §§ 9040, 9041.

under section 1331, the writ should be denied for the reasons set forth in the Commission's motion to affirm in No. 79-1373.

1. The district court had no jurisdiction over appellants' claims pursuant to its general jurisdiction over federal claims. 28 U.S.C. § 1331. Where Congress has provided specific judicial review mechanisms, jurisdiction is improper under 28 U.S.C. §§ 1331, 2201 or 2202. Special statutory schemes, as provided in FECA and the Fund Act, are held to be the exclusive avenues for judicial review and preclude consideration of such claims pursuant to the general jurisdictional statutes of Title 28. *See Brown* v. *General Services Administration,* 425 U.S. 820, 834 (1976); *American Power & Light Co.* v. *SEC,* 325 U.S. 385, 389 (1945). *See also, Ewing* v. *Mytinger & Casselberry,* 339 U.S. 594 (1950); *United States* v. *Babcock,* 350 U.S. 328 (1919). Accordingly, declaratory and injunctive relief is inappropriate unless pursuant to the specific statutory scheme established by Congress. *See Grutka* v. *Barbour,* 549 F.2d 5, 8 (7th Cir. 1977); *Atlantic & Gulf Stevedores Inc.* v. *Donovan,* 274 F.2d 794, 798 n.11 (5th Cir. 1960).[3]

[3] Appellants seemingly asserted the declaratory judgment provisions as an independent jurisdictional base. However, this Court has specifically held:

> "[T]he operation of the Declaratory Judgment Act is procedural only . . . Congress enlarged the range of remedies available in the federal courts but did not extend their jurisdiction . . .".

Skelly Oil Co. v. *Phillips Petroleum Co.,* 339 U.S. 667, 671 (1950).

The statute central to appellants' claim contains the specific three-judge review provision set forth in 26 U.S.C. § 9011 for resolution of constitutional attacks, as well as provision for regular challenges in the courts to Commission actions; 2 U.S.C. § 437h provides the totally different review scheme of certification to the court of appeals *en banc* of questions relating to the constitutionality of FECA. The conclusion that such challenges as are at issue in this action are properly brought under the general jurisdictional statutes of Title 28, would render section 9011 of Title 26 and section 437h of Title 2 nullities.[4]

2. If this Court determines that jurisdiction was proper under 28 U.S.C. § 1331, it should deny the writ

[4] Section 437h, originally section 313 of FECA, became section 310 in a renumbering of sections by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980). These two judicial review provisions, 2 U.S.C. § 437h and 26 U.S.C. § 9011, are merely one aspect of a comprehensive judicial review scheme devised by Congress to govern FECA and Subtitle H. In addition to these provisions, the 1976 amendments revised the Commission's enforcement procedures, 2 U.S.C. § 437g, to include a specific mechanism for judicial review of Commission action or failure to act. 2 U.S.C. §437(g)(a)(9), now 2 U.S.C. §437g(a)(8). The 1979 Amendments to FECA, Pub. L. No. 96-187 (1980), made further revisions to the Commission's enforcement procedures—not herein relevant—and renumbered section 437g. Section 437g(a)(10) provides that all actions brought under § 437g (including actions brought by the Commission to enforce the provisions of both FECA and Subtitle H which may give rise to defenses challenging their constitutionality) shall be advanced on the docket of the court in which filed. Similarly, the Fund Act, Chapter 95, provides for expedited hearing and determination of every case brought pursuant to the provisions of that chapter. 26 U.S.C. § 9010. Chapter 96 of Subtitle H—the Presidential Primary Matching Payment Account—has separate provisions for judicial review. *See* 26 U.S.C. §§ 9040, 9041.

for the reasons set forth in the Commission's motion to affirm in No. 79-1373.[5]

CONCLUSION

The petition for writ of certiorari should be denied for the foregoing reasons, or for the reasons set forth in the Commission's motion to affirm in No. 79-1373.

Respectfully submitted,

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[5] If this Court determines, however, that jurisdiction was proper under 28 U.S.C. § 1331, the Commission would consider this case appropriate for a prejudgment writ under Sup. Ct. R. 20, because it is the same case as Nos. 79-1373 and 79-1375. The writ should, nevertheless, be denied for the reasons set forth in the Argument in No. 79-1373.

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